

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Telephone Number Portability)	
)	CC Docket No. 95-116
Franklin Telephone Company, Inc.)	
Inter-Community Telephone Company, LLC)	
North Central Telephone Cooperative, Inc.)	
)	
Petitions for Waiver of Section 52.23(c))	
of the Commission's Rules)	

To: Chief, Wireline Competition Bureau

**CONSOLIDATED REPLY OF FRANKLIN TELEPHONE COMPANY, INC.,
INTER-COMMUNITY TELEPHONE COMPANY, LLC AND
NORTH CENTRAL TELEPHONE COOPERATIVE, INC.**

On September 24, 2003, Franklin Telephone Company, Inc., Inter-Community Telephone Company, LLC and North Central Telephone Cooperative, Inc. ("Petitioners"), out of an abundance of caution, each filed petitions with the Commission seeking limited relief from number portability obligations imposed by the Commission's rules,¹ to the extent necessary. Petitioners, each rural local exchange carriers ("LECs"), had received, from one or more providers of wireless service, requests to implement number portability. Petitioners answered these requests, questioning their legitimacy because, *inter alia*, there was no indication that the requests were confined to the current requirement to provide service provider, versus location, portability.²

¹ See 47 C.F.R. § 52.23(c).

² The Act and the FCC have defined the obligation of a LEC to provide number portability that enables the "users of telecommunication services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."

The wireless carriers either failed to respond to Petitioners' challenges, or responded in a manner, which did not address the issues raised by a Petitioner. During the same period, several proceedings relating to number portability implementation were pending before the Commission, wherein carriers were seeking modification or guidance regarding implementation issues.³

In the absence of the requesting carriers' willingness to enter into a meaningful dialogue, and lacking direction from the Commission, Petitioners were compelled to file the subject Petitions to preserve their rights under the Communications Act of 1934, as amended (the "Act"), and the Commission's Rules. Given the existence of outstanding issues regarding wireless-wireline number portability implementation, specifically recognized by the Commission,⁴ and given the looming deadline of November 24, 2003, some guidance is clearly required, and, to the extent that the received porting requests are deemed to have any validity, an extension of the deadline is necessary to ensure that implementation occurs in a rational manner.⁵

47 U.S.C. § 153(30) (emphasis supplied); 47 C.F.R. § 52.21(k) (emphasis supplied). The FCC has distinguished this "service provider portability" from "location portability," a much different form of portability that the FCC has determined is not required by statute. "Location portability" is defined as "the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another." 47 C.F.R. § 52.21(i) (emphasis supplied).

³ See *Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas*, Public Notice, CC Docket No. 95-116, DA 03-211 (rel. January 27, 2003); *Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues*: Public Notice, CC Docket No. 95-116, DA 03-1753 (rel. May 22, 2003).

⁴ In responding to questions regarding FCC action on pending issues regarding number portability, John Muleta, Chief of the FCC's Wireless Telecommunications Bureau stated, "We'll do it soon. . . . We've said that we will address it well in advance of the Nov. 24 LNP deadline." "FCC Officials Press Wireless Firms to Move Ahead on LNP Deployment," TR Daily, Sept. 8, 2003 ed.; see *In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireline-Wireless Porting Issues: Memorandum Opinion and Order*, CC Docket No. 95-116, FCC 03-237 at para. 1 (rel. Oct. 7, 2003) ("October 7 Order") (FCC promising that it would "address wireline-wireless porting in a separate order").

⁵ These implementation questions have been a matter of record before the Commission for nine months; more than two weeks ago, the Commission again noted its intent to address issues related to wireline-wireless porting. See *id.*

Wireless carriers opposing the Petitions⁶ now take the opportunity to respond to the concerns raised by Petitioners by disparaging Petitioners' implementation concerns as unworthy⁷ or untimely,⁸ and questioning Petitioners' motives in filing for the requested limited relief.⁹ These objections are unfounded and clearly contradicted by the information provided in the Petitions. Accordingly, Petitioners are entitled to the requested relief.

Moreover, the oppositions generally are reflective of the pervasive, imperious disregard of inconvenient realities evidenced by many national wireless carriers.¹⁰ Petitioners, however,

⁶ In response to the *Public Notice*, Wireline Competition Bureau Seeks Comment on the Requests for Waiver or Temporary Extension of the Requirement to Provide Local Number Portability to CMRS Providers, CC Docket No. 95-116, DA 03-3014 (rel. Oct. 2, 2003), oppositions to the Petitions were filed by Sprint Corporation ("Sprint"), Western Wireless Corporation ("Western Wireless"), AT&T Wireless Services, Inc. ("AT&T"), Verizon Wireless ("Verizon"), and T-Mobile USA, Inc.

⁷ For example, certain commenters suggest that Petitioners do not demonstrate "special circumstances" in support of the requested relief. *See, e.g.*, Opposition of T-Mobile USA, Inc. at 2. To the contrary, Petitioners clearly articulate the unresolved issues that make their implementation of the specific porting requests impracticable, at best. The fact that these circumstances may affect a significant number of companies should not detract from their impact on Petitioners. In addition, each Petitioner has demonstrated the specific issues that it confronts.

⁸ For example, one opponent suggests that "to the extent [Petitioners] have legitimate concerns about location portability, they should have honored the BFR and later question specific port requests that appear . . . to be requests for location portability [as opposed to service provider portability]." Opposition of T-Mobile USA, Inc. at 3-4. This interpretation is contrary to the Rules, as well as reasonable business practices. Similarly, criticism regarding the timing of the filing itself ignores both the requesting wireless carriers' failure to respond substantively to Petitioners, as well as the pending nature of Commission proceedings.

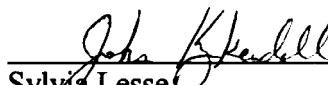
⁹ Sprint Corporation, for instance, suggests that Petitioners are merely recalcitrant, while other commenters lecture Petitioners regarding the obligation to provide number portability. Petitioners have not, and do not, contest their obligation to provide "the ability of users of telecommunication services to retain, *at the same location*, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. §153 (30) (emphasis added). The question, of course, is whether wireless carriers' requests were consistent with this definition and, if so, how to identify and accomplish technical aspects of portability.

¹⁰ With the single exception of Sprint, opponents do not reference (or reference only in passing) the Commission's October 7 Order, which specifically recognizes and reserves action with respect to wireless-wireline porting issues, despite the issuance of the Order more than one week prior to the comment filing date. Sprint, moreover, merely pays lip service to the Commission's admonition that its October 7 Order does not "bind the Commission in any way in taking future action on the implementation of wireline-wireless porting," (October 7 Order at para. 21), maintaining nonetheless that logic demands the application of decisions made in the wireless-wireless porting environment to wireline-wireless porting. Sprint Opposition at nn. 66 and 71, and accompanying text.

maintain that it is more prudent, less disruptive and ultimately to the benefit of all consumers if identified issues are addressed directly and resolved as soon as possible, rather than ignored or postponed. Accordingly, while preserving all rights with respect to their individual waiver requests, Petitioners anticipate that generalized guidance and clarification will be forthcoming in the Commission's promised separate item on wireline-wireless porting issues.¹¹ In the interim, and again, in an abundance of caution, the Petitioners continue to seek, and have shown good cause, for the grant of the waiver they have each requested.

Respectfully submitted,

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Nor, it appears, will statutory requirements be allowed to stand in the way of perceived business prerogatives. Verizon Wireless, for example, informs the Commission that it should disregard the Act's delegation of authority to state commissions to hear petitions "for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c)" of eligible applicants (47 U.S.C. §251(f)(2)). Since number portability obligations are specifically enumerated among 251(b) obligations of carriers, the suggestion that the Commission has the authority to preempt state proceedings is absurd. *See, In the Matter of Telephone Number Portability: First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7303 (1997) ("[e]ligible LECs that have been granted suspension or modification of number portability requirements under Section 251(f)(2) are not bound by our implementation schedule until the state commission removes the suspension").

¹¹ See October 7 Order at paras. 1 & 21.

CERTIFICATE OF SERVICE

I, KaTriska Orville, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Consolidated Reply of Franklin Telephone Company, Inc., Inter-Community Telephone Company, LLC and North Central Telephone Cooperative, Inc." was served on this 24th day of October 2003, by first class, U.S. mail, postage prepaid or by hand delivery to the following parties:



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